

a calendar year rather than on remuneration earned during a calendar year. If cash remuneration of \$100 or more is paid in a particular calendar year, it is immaterial whether such remuneration is in payment for services performed during the year of payment or during any other year.

(b) The application of paragraph (a) of this section may be illustrated by the following example:

Example. A, a home worker, performs services for X, a manufacturer, in 2003 and 2004. In the performance of the home work A is an employee by reason of section 3121(d)(3)(C). In March 2004, A returns to X articles made by A at home from materials received by A from X in 2003. X pays A cash remuneration of \$100 for such work when the finished articles are delivered. The \$100 includes \$10 which represents remuneration for home work performed by A in 2003. The entire \$100 is subject to the taxes. Any additional cash remuneration paid by X to A in 2004 for such services is also subject to the taxes.

(c) In the event an employee receives remuneration in any one calendar year from more than one employer for services performed as a home worker of the character described in paragraph (a) of this section, the regulations in this section are to be applied with respect to the remuneration received by the employee from each employer in such calendar year for such services. This exclusion from wages has no application to remuneration paid for services performed as a home worker who is an employee under section 3121(d)(2) (see § 31.3121(d)-1(c)) relating to common law employees.

(d) Cash remuneration includes checks and other monetary media of exchange. Remuneration paid in any other medium, such as clothing, car tokens, transportation passes or tickets, or other goods or commodities, is disregarded in determining whether the \$100 cash-remuneration test is met. If the cash remuneration paid in any calendar year by an employer to an employee for services performed as a home worker of the character described in paragraph (a) of this section is \$100 or more, then no remuneration, whether in cash or in any medium other than cash, paid by the employer to the employee in such calendar year for such services is excluded from wages under this exception.

(e)(1) For provisions relating to deductions of employee tax or amounts equivalent to the tax from cash payments for services performed as a home worker within the meaning of section 3121(d)(3)(C), see § 31.3102-1.

(2) For provisions relating to the time of payment of wages for services performed as a home worker within the meaning of section 3121(d)(3)(C), see § 31.3121(a)-2.

(3) For provisions relating to records to be kept with respect to payment of wages for services performed as a home worker within the meaning of section 3121(d)(3)(C), see § 31.6001-2.

(f) The provisions of this section apply to any payment for services performed as a home worker within the meaning of section 3121(d)(3)(C) made on or after January 1, 1978. For rules applicable to any payment for services performed as a home worker within the meaning of section 3121(d)(3)(C) made prior to January 1, 1978, see § 31.3121(a)(10)-1 in effect at such time (see 26 CFR part 31 contained in the edition of 26 CFR parts 30 to 39, revised as of April 1, 2006).

[T.D. 9266, 71 FR 35156, June 19, 2006]

§ 31.3121(a)(11)-1 Moving expenses.

(a) The term “wages” does not include remuneration paid on or after November 1, 1964, to or on behalf of an employee, either as an advance or a reimbursement, specifically for moving expenses incurred or expected to be incurred, if (and to the extent that) at the time of payment it is reasonable to believe that a corresponding deduction is or will be allowable to the employee under section 217. The reasonable belief contemplated by the statute may be based upon any evidence reasonably sufficient to induce such belief, even though such evidence may be insufficient upon closer examination by the district director or the courts finally to establish that a deduction is allowable under section 217. The reasonable belief shall be based upon the application of section 217 and the regulations thereunder in Part 1 of this chapter (Income Tax Regulations). When used in this section, the term “moving expenses” has the same meaning as when used in section 217 and the regulations thereunder.

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(b) Except as otherwise provided in paragraph (a) of this section, or in a numbered paragraph of section 3121(a), amounts paid to or on behalf of an employee for moving expenses are wages for purposes of section 3121(a).

[T.D. 7375, 40 FR 42350, Sept. 12, 1975]

§ 31.3121(a)(12)-1 Tips.

The term “wages” does not include remuneration received by an employee after December 1965 in the form of tips if—

(a) The tips are paid in any medium other than cash, or

(b) The cash tips received by an employee in any calendar month in the course of his employment by an employer are less than \$20.

If the cash tips received by an employee in a calendar month after December 1965 in the course of his employment by an employer amount to \$20 or more, none of the cash tips received by the employee in such calendar month are excluded from the term “wages” under this section. The cash tips to which this section applies include checks and other monetary media of exchange. Tips received by an employee in any medium other than cash, such as passes, tickets, or other goods or commodities do not constitute wages. If an employee in any calendar month performs services for two or more employers and receives tips in the course of his employment by each employer, the \$20 test is to be applied separately with respect to the cash tips received by the employee in respect of his services for each employer and not to the total cash tips received by the employee during the month. As to the time tips are deemed paid, see § 31.3121(q)-1. For provisions relating to the treatment of tips received by an employee prior to 1966, see paragraph (j)(3) of § 31.3121 (a)-1.

[T.D. 7001, 34 FR 999, Jan. 23, 1969]

§ 31.3121(a)(13)-1 Payments under certain employers’ plans after retirement, disability, or death.

(a) *In general.* The term “wages” does not include the amount of any payment or series of payments made after January 2, 1968, by an employer to, or on behalf of, an employee or any of his

dependents under a plan established by the employer which makes provisions for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), which is paid or commences to be paid upon or within a reasonable time after the termination of an employee’s employment relationship because of the employee’s—

(1) Death,

(2) Retirement for disability, or

(3) Retirement after attaining an age specified in the plan established by the employer or in a pension plan of the employer at the age at which a person in the employee’s circumstances is eligible for retirement.

A payment or series of payments made under the circumstances described in the preceding sentence is excluded from “wages” even if made pursuant to an incentive compensation plan which also provides for the making of other types of payments. However, any payment or series of payments which would have been paid if the employee’s relationship had not been terminated is not excluded from “wages” under this section and section 3121(a)(13). For example, lump-sum payments for unused vacation time or a final paycheck received after retirement are payments which the employee would have received whether or not he retired and therefore are not excluded from “wages” under this section. Further, if any payment is made upon or after termination of employment for any reason other than those set out in subparagraphs (1), (2), and (3) of this paragraph such payment is not excludable from “wages” by this section. For example, if a pension plan provides for retirement upon disability, completion of 30 years of service, or attainment of age 65, and if an employee who is not disabled retires at age 61 after 30 years of service, none of the retirement payments made to the employee under the pension plan (including any made after he is 65) is excludable from “wages” under this section. However, if the pension plan had conditioned retirement after 30 years of service upon attainment of age 60, all of the retirement payments would have been excludable.